IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3357 OF 2007

Smt. Krushnabai T. Patil .... Petitioners
& Ors.
Vs.

The State of Maharashtra .... Respondent

Mr. S.M. Kamble for Petitioners.
Mr. V.S. Mhaispurkar for Respondent

CORAM : A.S. OKA, J.
DATE : 9TH JULY, 2007

P.C.

1) Rule.

2) Learned A.G.P. appearing for respondent waives service. In view of the earlier order, the Petition is taken up for final disposal at the stage of admission. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the order dated 30th November 2006.

3) The petitioners are the claimants in a Reference under Section 18 of The Land Acquisition Act. The Petitioners made an application in the execution proceeding filed for execution of the Award passed in the Reference proceeding praying

that the amount payable to the Petitioners be paid by a Demand Draft drawn in favour of the Petitioners and the said Demand Draft be handed over to the constituted attorney of the Petitioners. The said application has been rejected by order dated 30th November 2006.

4) I have heard submissions of learned counsel appearing for the parties. The prayer in the application made at Exhibit 17 was that the amount payable to the Petitioners be paid by a Demand Draft drawn in favour of the Petitioners and the constituted attorney of the Petitioners may be permitted to receive the said Demand Draft. Reliance was placed on the Power of Attorney executed by the Petitioners which was produced before the executing Court.

5) Considering the peculiar facts of the case, the Trial Court should have favourably considered the request made by the Petitioners. Necessary precautions could have been ordered to be taken by directing that the Demand Draft shall be drawn in the name of the Petitioners and the constituted Attorney could have been directed to file an Affidavit stating that the Power of Attorney is still valid and subsisting. The present Petition

is affirmed by the first Petitioner. Even the Vakalatnama of the Advocate for the Petitioners is signed by the Petitioners. Thus, this petition is not filed through the constituted attorney of the Petitioners.

6) Considering the aforesaid aspects, I pass following order :

O R D E R

(i) The impugned order dated 30th November 2006 is quashed and set aside.

(ii) The amount payable to the Petitioners in execution of the award made in Land Acquisition Reference No. 87 of 1994 shall be paid by a Demand Draft drawn jointly in the name of the Petitioners.

(iii) The constituted attorney of the Petitioners is permitted to receive the said Demand Draft on behalf of the Petitioners without insisting for the personal presence of the Petitioners, subject to the said constituted attorney filing an Affidavit stating therein that the Power of Attorney executed by the Petitioners is still valid and subsisting and that he undertakes to hand over the Demand

Draft to the Petitioners. The Demand Draft will be handed over to the constituted Attorney only after the compliance of this condition.

(iv) Petition is partly allowed in above terms.

(A.S. OKA, J.)